

REMARKS

This is in response to the Official Action currently outstanding with respect to the above-identified application, which Official Action the Examiner has designated as being FINAL.

Claims 1-30 are pending in this application. Claims 1-19 were withdrawn from further consideration in view of Applicants' response to the Examiner's Restriction Requirement. Claims 29-30 previously were withdrawn from further consideration by the Examiner on the basis that Claims 29-30 are directed to a non-elected invention (Applicants having constructively elected the invention of Claims 20-28 by virtue of the issuance of a substantive action on the merits of those claims). By the foregoing Amendment, Applicants are proposing that Claims 20, 21, 25 and 26 be amended further so as to more clearly and distinctly set forth the subject matter that Applicants regard as their invention in a manner that Applicants believe places the claims of this application in condition for allowance. Applicants do not propose the addition, the cancellation or the further withdrawal of any claims by the foregoing Amendment. Accordingly, in the event that the Examiner grants entry to the foregoing Amendment, Claims 20-28, as hereinabove amended, will constitute the claims under active prosecution in this application.

A version of the claims as they will stand in the event that the Examiner grants entry to the foregoing amendment is set forth above as required by the Rules.

More specifically, it is noted that in the currently outstanding Official Action, the Examiner has:

1. Failed to re-acknowledge Applicants' claim for foreign priority and the receipt by the United States Patent and Trademark Office of the required certified copies of the priority document –
Applicants' claim for foreign priority and the receipt by the United States Patent Office of the required copies of the priority documents were acknowledged in the Official Action dated 27 June 2005.
2. Failed to reconfirm that the drawings filed on 26 September 2000 in this application are deemed to be acceptable –
The acceptability of the formal drawings filed on 26 September 2000 was previously indicated in the Official Action of 27 June 2005.
3. It is noted that in acknowledging his consideration of Applicant's resubmission of their Information Disclosure Statement of 6 February 2001 (i.e., Letter requesting correction of the Form PTO-1449 filed with the Information Disclosure Statement filed concurrently with this application) in the currently outstanding Official Action, the Examiner apparently has indicated that only page 1 was received and considered by the Examiner. As was the case previously, the Examiner has inadvertently used the duplicate Form PTO-1449 that accompanied this application instead of the corrected Form PTO 1449 that was submitted with the Letter requesting the correction.

– Applicants are submitting herewith a copy of the Letter requesting that the corrected Form PTO-1449 be substituted for the incorrect Form PTO-1449 as filed concurrently with this application so as to ensure that the record appropriately reflects the Examiner's consideration of JP 6-85916 instead of JP 5-85916 as inadvertently incorrectly indicated on the Form PTO 1449 that accompanied the Information Disclosure Statement filed with this application. Acknowledgement of the consideration of JP 6-85916 in the course of the examination of this application is respectfully requested in response to this communication. Applicants regret the confusion their attempts to correct the foregoing inadvertent error has caused to the Examiner.

Hence, it is respectfully requested that the Examiner sign, date and initial the corrected Form PTO-1449 in confirmation of the consideration by the United States Patent and Trademark Office of all of the art listed therein and provided therewith.

4. Indicated that Claims 20-28 are rejected under 35 USC 103(a) as being unpatentable over the Wiser reference (US Patent No. 6,385,596.

With respect to items 1-4 above, further comment in these Remarks is not deemed to be necessary.

With respect to item 5, Applicants respectfully note that in the next previous Official Action the Examiner withdrew his rejection of Claims 20-28 based upon an alleged anticipation of those claims under the terms of 35 USC 102(e) by the Wiser reference (US Patent No. 6, 385,596), and substituted therefor a rejection of those claims (repeated in the currently outstanding FINAL Official Action) as being unpatentable under 35 USC 103(a) in view of the Wiser reference. In the latter regard, the Examiner took (and now maintains) the position that:

Wiser does not expressly disclose a data reproducing apparatus for reproducing digital data including reproducing apparatus specifying information specifying an apparatus capable of reproduction, comprising a housing containing: a storage apparatus, a first determining apparatus, a control apparatus and a CPU. Wiser discloses a data reproducing apparatus wherein the storage apparatus, the first determining apparatus, the control apparatus and the CPU are remotely interconnected. The Examiner notes, shifting the position of the storage apparatus, the first determining apparatus, the control apparatus and the CPU does not modify the operation of the data reproducing apparatus. The mere fact that the storage apparatus, the first determining apparatus, the control apparatus and the CPU are rearranged and positioned in a housing container is not by itself sufficient to patentably distinguish the instant invention from the prior art. See *In re Japikse*, 181 F. 2d 1019, 86 USPQ 70 (CCPA 1950). Furthermore, applicant has not persuasively demonstrated the criticality of providing storage apparatus, the first determining apparatus, the control apparatus and the CPU in a housing container versus the apparatus disclosed by Wiser. (Emphasis in original).

Applicant respectfully noted in response to the above-quoted portion of the Examiner's remarks (and again notes herein) that significantly the Examiner has consistently incorrectly referred to "the CPU" (singular) with respect to the Wiser reference that discloses at least three CPU's that interact with one another. This point will be discussed further below.

In the currently outstanding FINAL Official Action, the Examiner indicates in his Response to Arguments section that Applicants' previous arguments are deemed to be moot in view of his new grounds for rejection and further that:

After a reevaluation of the Wiser reference, it was determined that content manager **112** is a CPU directly controlling the manner of operation of said storage apparatus, said first determining apparatus, and said control apparatus as well as reproduction of said digital data enabled by said control apparatus (as presently claimed – see Claim 20).

In support of that position, the Examiner basically quoted the description of the "Content Manager" found at Column 9, lines 40-52, of the Wiser reference as follows:

The content manager **112** is the central transaction processor of the music distribution center **124**, and is responsible for the overall management and administration of the "content" of the media data files, beginning with the receipt and storing of published media data files **200** from various authors, the management of preview and purchase transactions by individual users of media data files including the encryption of the media data files **200** in a manner that allows only a particular user to access the media for playback, and reporting to rights agents of purchases and other uses of media data for proper compensation of author's fees and royalties from such uses. The content manager **112** stores details of each transaction in the transactions database **130**.

Applicants assume that the Examiner's intent in this regard was to allege that paragraph (iv) of Claim 20 of this application as amended in the next previous amendment is disclosed by Wiser's "Content Manager". Paragraph (iv) of amended Claim 20 reads as follows:

(iv) a CPU directly controlling the manner of operation of said storage apparatus, said first determining apparatus, and said control apparatus as well as the reproduction of said digital data enabled by said control apparatus as audio and/or video signals. (underlining added by the present Amendment above)

The Examiner also again asserts that there is no patentable distinction between the Wiser **remotely interconnected elements** and the present invention wherein the claimed elements are all located together in a housing. Indeed, the Examiner suggests that the Applicants have failed to demonstrate the criticality of providing the claimed elements together in a housing as opposed to separately and remotely interconnected with one another. The importance of these distinctions in the context of the present application, however, will become apparent below.

Applicants respectfully submit that the Examiner's present position constitutes nothing more than a refinement upon his previous "*broadest reasonable interpretation*" of the claims of this application wherein he effectively held that the operation of the Wiser system wherein a CPU controlling one part of a system (the media player) interacts with other CPUs controlling one or more other parts of the system (the music distribution center (as controlled by the content manager 112) and the music licensing center) during system operation is the same thing as a single CPU controlling all of the claimed elements assembled together in a single housing.

Applicants cannot agree. In particular, Applicants again respectfully submit (as they did in response to the previous Official Action in this application) that it is somewhat far fetched to say that an input of information to a particular CPU to be acted upon by that particular CPU according to its internal, previously established, programming is an act “controlling” that particular CPU. This is particularly the case in a situation wherein the input provided in no way acts to determine the manner in which the particular CPU will handle the input. Thus, in such a case, the input might be said to cause the particular CPU to operate, but the fact that the particular CPU may be caused to operate does not mean that the source of the input can be said to “control” the manner in which the particular CPU operates (i.e., handles the input provided to it).

Accordingly, it will be noted that the Examiner now suggests that: “content manager **112** is a CPU **directly** controlling the manner of operation of said storage apparatus, said first determining apparatus, and said control apparatus **as well as reproduction of said digital data enabled by said control apparatus**” (Emphasis added). Applicants next previous amendment of the final paragraph of the presently pending independent claims was specifically directed to the possibility that the Examiner might take a position similar to that which he now has adopted. Hence, Applicants respectfully submit that the simple fact is that the presently claimed CPU that directly controls the operation of the elements of the claimed reproduction device **including the actual reproduction of the enabled digital data** is not the same as the content manager 112 of the Wiser reference. Specifically, as far as Applicants have been able to determine the CPU controlling the Wiser content manager 112 has no function in the direct control of the manner of operation of media player CPU in the **actual reproduction of the digital data enabled by the control manager for download as audio and/or video signals.**

In other words, while the control manager of the Wiser reference may have a function in controlling what can be downloaded to the media player (in the present invention as now claimed to the internal memory or to the external memory mounted on the housing), the control manager does not directly control the reproduction of the downloaded data by the media player. The foregoing Amendment proposes to clarify this fact further by specifying that the reproduction being referred to in the claim is the actual reproduction of audio and/or video signals derived from digital data stored in or by an apparatus element mounted to the claimed housing as opposed to data from which those signals may be derived via download.

Thus, contrary to the Examiner's assertions in the currently outstanding FINAL Official Action, Applicants respectfully submit that the content manager 112 of Wiser in no way controls the operation of the reproducing apparatus in the **audio and/or visual** reproduction of digital information as distinct from functioning remotely in the determination of what digital data will be made available to the reproduction apparatus (media player) via download to the memory associated **directly with the claimed housing** for reproduction under the control of its own CPU. In other words, the Wiser **system** is not the same as, and does not teach, disclose or suggest, the presently claimed reproduction **apparatus**.

In further support of the foregoing position, Applicants have noted several additional portions of the Wiser reference that appear to be contrary to the Examiner's present broad interpretation thereof. First, at Column 5, line 43 to Column 6, line 14, Wiser specifically describes his system as having a "client-server architecture" including a music distribution center 124 and any number of client systems 126. Each of the client systems is stated to have a media player 116 and a web browser 128. In addition, at Column 6, lines 3-14, it is made clear that the music distribution center operates on a server-class computer system while the media player operates on any one of several PC type computer systems.

Also, subsequent to the portion of the Wiser specification at which the description of the content manager quoted by the Examiner appears, Wiser indicates at Column 10, lines 1-16, that the media player is the mechanism by which the consumer plays back and records for subsequent use the data made available by music distribution center and further that the media player includes its own internal music database management features.

Still further, at Column 16, lines 14-25, Wiser describes the user interface of the media player that is used to control the manner in which the data made available by the music distribution center via the delivery server is reproduced as audio signals. Applicants respectfully note that the Wiser content manager exerts no control of that interface.

Finally, Applicants respectfully note that the media player is discussed in detail at Column 25, line 49 to Column 27, line 10 of the Wiser reference. This portion of the Wiser reference clearly states that the media player provides decryption and playback of media data files that it receives from the delivery server and that the media player includes a playback module that is responsible for the actual playback of the media data files, including the start, stop, pause and reverse functions of the playback.

Hence, Applicants respectfully submit that contrary to the Examiner's apparent current position, it is clear that in Wiser the computer associated with the media player is (a) separate from the computer associated with the content manager, and (b) that the reproduction of the media data files either as data to a memory or as actual audio/video signals is controlled by the computer associated with the media player, not the computer associated with the content manager.

In other words, while the content manager may be the ultimate control over what media data files are made available to the computer associated with the media player via the delivery servers 118 in Wiser thereby arguably allowing it to be said to control the reproduction of the media data files by the media player by virtue of its control over what media data files are made available to the media player, in no case can the computer associated with the content manager be even arguably said to control the reproduction of actual audio/video signals from the downloaded media data files.

Applicants also respectfully submit that the following points of argument previously presented in this prosecution remain significant to the determination of the allowability of the present claims.

As the Examiner has explicitly admitted, the Wiser reference discloses a system of remotely interconnected elements that depends for its operation upon interactions between and among those elements. The Examiner apparently has failed to recognize in this regard, however, that when read in the manner that he has suggested, the Wiser reference discloses a closed system in the sense that it encompasses the data source (music distribution center controlled by the control manager), the reproduction apparatus (media player) and a gating device that determines whether data from the source can be provided to the reproduction apparatus (the music licensing center). (See Wiser Abstract and System Overview at Column 5, line 43 to Column 6, line 46)

Applicants respectfully submit that this is quite different from, and not suggestive of, a device such as that herein claimed that is not limited as to the sources from which it can receive data except by the capabilities of the elements of the device (i.e., the presently claimed invention is not a closed system wherein by virtue of the remote interconnection of its elements the source of data for reproduction and the control of the availability of the data are specifically defined remotely of the reproduction elements of the device, but rather the presently claimed invention is a device that can receive input data from many sources limited only by the technical capabilities of its components).

Accordingly, Applicants respectfully submit that the Examiner's above-quoted comments fail to take into account the fact that the present invention is not simply a rearrangement of the elements of the cited reference. In the claimed invention, all of the elements are located together in a housing (or mounted directly to a housing) such that in accordance with the capabilities thereof digital data may be obtained from many different sources for local storage and thereafter internally processed for reproduction. In other words, the present invention is not dependent upon the characteristics of (nor does it include) the digital data source and/or other remote devices that control the availability of the digital data from the digital data source (i.e., the digital data source [music distribution center] as controlled by another site [music licensing center]) for its operation). In addition, the claimed CPU does not encompass the CPU's that may control the digital data source and/or a site that controls the availability of digital data from the digital data source.

Therefore, Applicants respectfully submit that it is clear that the present invention is not simply a rearrangement of the remotely interconnected parts of the Wiser reference. Further, Applicants respectfully submit that the importance (criticality) of locating the claimed elements within (or mounted directly to) a housing such that the manner of their operation and the reproduction of received digital data are directly controlled by the claimed CPU is apparent once it is recognized that the present invention is to receive digital data from external (i.e., the internet or otherwise) for local storage, not from elements constituting part of the device located remotely of the data reproduction apparatus that define the source and availability of the digital data. Hence, Applicants respectfully submit that the Examiner's reliance upon the Wiser reference is misplaced.

In further support of the foregoing, Applicants respectfully note that as previously stated in these proceedings the Wiser reference discloses that when the media player is first started up, it first searches for the user's passport (which in Wiser is stored in, or in association with, the media player). If the media player fails to detect the existence of the user's passport, a Web browser is automatically launched that directs the user to the URL of a registration page of a media-licensing center without involvement of the content manager 112 (i.e., the entire concept of the Wiser reference is that the media player is to be tied to external web sites in a closed system).

Thereafter, a registration process takes place between the user (i.e., the media player) and the media- licensing center prior to the allowance of any communication between the media player and the Music Distribution Center i.e., content manager 112. (See, Wiser at Column 13). Hence, at the outset of its operation, the Wiser apparatus compels a user (i.e., the media player) to obtain a “passport” that includes both public and private keys to be used in the subsequent reproduction of encrypted music files (either free portions with the public key or purchased complete files with the private key) as well as a consumer certificate from the media- licensing center (i.e., a registration procedure within the closed system disclosed by the Wiser reference).

In addition, in the Wiser disclosure, the “passport” is monitored by a content manager that is in communication with the Media Licensing Center for the purpose of authenticating the validity of the “passport” stored on the media player at the beginning of each transaction. Thus, while consumer certificates associated with the Music Distribution Center disclosed by Wiser apparently have to be updated frequently (say every 2 to 4 weeks, see Wiser at Column 23, lines 31 to 37), the consumer certificates are valid for periods of 1 year and apparently automatically renew themselves (i.e., compel a re-registration by the user’s media player at the end of their predetermined period of validity, see Wiser at Column 25, lines 40 – 48).

Therefore, in Wiser, a comparison of valid user certificates is made at the content manager to determine (1) whether or not the Music Distribution Center is allowed to manage particular files, and (2) whether or not the Music Distribution Center is allowed to transfer data to the reproducing apparatus (media player), but not whether or not the media player can play the audio/video signals derivable from the downloaded data as media files.

The latter feature of the Wiser reference has apparently been interpreted by the Examiner as being a determination of whether or not the reproducing apparatus (i.e., the media player) is capable of reproducing data received from the Music Distribution Center based upon reproduction apparatus specifying information (i.e., the components of a valid “passport” for the media player contained in the media licensing center as monitored by the content manager) and apparatus ID information (i.e., “passport” components stored in association with the media player seeking access to music files for the reproduction thereof). Applicants again respectfully submit, however, that the Examiner’s position breaks down as it applies to the presently pending claims of this application with regard to the claimed “control apparatus”, with respect to the claimed “CPU” and with respect to the disposition of all of the elements of the present device in the same housing for use in the reproduction of data from many and diverse locations, i.e., not only from within a defined closed system as in the Wiser reference.

More particularly, the Examiner’s position is that the “passport” embodied in a memory associated with the media player enables or disables reproduction dependent upon the determination result (i.e., whether the “passport” components stored in association with the media player match the current “passport” components for that media player present in the media licensing center in a manner such that the content manager allows the download of the music files to the media player).

Thus, as previously mentioned and discussed above, if the foregoing is the case, even the Examiner’s present extremely broad interpretation cannot be said to reasonably support the fact that in Wiser the same CPU does not control (i) the storage apparatus (in Wiser, the Media Licensing Center and/or the Music Distribution Center), (ii) the first determining apparatus (i.e., the authentication function of the Music Distribution Center), (iii) the control apparatus and (iv) the reproduction of the digital data enabled for playback by the media player by the control apparatus as hereinabove claimed.

In other words, the present invention is directed to a data reproducing apparatus (device) with all of its components located together under the control of a single CPU, rather than to a closed data reproducing system composed of various widely separated components that limit the digital data that may be reproduced as well as the availability of that digital data to the reproduction device i.e., media player (note in the Wiser reference the media player is contemplated to communicate via the internet, and the Music Licensing Center and the Music Distribution Center are contemplated to be located at widely separated locations and in communication with one another via land lines or the like).

Consequently, Applicants respectfully submit that contrary to the present claims, the Wiser reference cannot justifiably be read in any manner other than including widely separated elements such that those elements cannot be construed as being contained together in or directly mounted on a housing.

Further, Applicants respectfully submit that Wiser cannot be interpreted as including a single CPU directly controlling all of the elements hereinabove claimed as being contained in or mounted directly on a housing, rather than a media player CPU that is different from (and separate from) the CPU(s) controlling the Music Distribution Center (control manager) and Media Licensing Center contrary to the present claims for the reasons discussed in detail above.

Still further, Applicants respectfully submit that because the presently claimed source of the digital data and the gateway determining the availability of that data to the reproducing device are integral parts of the presently disclosed and claimed system, the Wiser reference's disclosure, even when given its *broadest reasonable interpretation*, cannot be read in a manner anticipating the presently pending claims or otherwise rendering the present invention as hereinabove claimed unpatentable.

Applicants respectfully submit that the foregoing amendment does not introduce any new matter into this application. In addition, Applicants respectfully submit that the foregoing amendment results in the claims of this application being more particularly and clearly directed to the fact that the claimed CPU directly controls the manner of operation of the other claimed elements within or mounted directly to the housing as well as the reproduction of the digital data as audio and/or video signals without reference to an external digital data source or a gateway control of the output of that digital data source. Hence, Applicants respectfully submit that the claims as hereinabove amended are clearly distinct and nonobvious with respect to the Wiser reference.

In summary, Applicants respectfully submit that a closed system wherein the functions of devices (media distribution center, media licensing center) external to the reproduction apparatus (media player) operated by their own CPU's interact with the media player's CPU (are caused to operate according to their own internal programming in response to input from the media player's CPU) by way of a status monitoring functions and/or data requests (such as the Wiser Media Licensing Section monitoring the "passport" stored in the media player for the purpose of verifying its validity at the beginning of each transaction) is not the same as the presently claimed invention, nor does it render the presently claimed invention unpatentable within the meaning of 35 USC 103(a)

For each and all of the foregoing reasons, Applicants respectfully submit that the claims of this application as they will stand in the event that the Examiner grants entry of the foregoing Amendment are in condition for allowance. Therefore, entry of the foregoing Amendment, reconsideration and allowance of Claims 20-28 as hereinabove amended in response to this communication are respectfully requested.

Finally, Applicants believe that additional fees are not required in connection with the consideration of this response to the currently outstanding Official Action. However, if for any reason a fee is required, a fee paid is inadequate or credit is owed for any excess fee paid, you are hereby authorized and requested to charge and/or credit Deposit Account No. **04-1105**, as necessary, for the correct payment of all fees which may be due in connection with the filing and consideration of this communication.

Respectfully submitted,

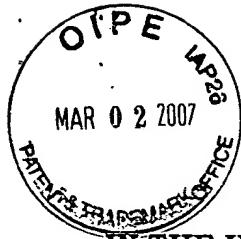
Date: March 2, 2007

By: David A. Tucker

David A. Tucker
Reg. No. 27,840
Attorney for Applicant(s)

EDWARDS ANGELL PALMER & DODGE, LLP
P.O. Box 55874
101 Federal Street
Boston, MA 02205
(617) 517-5508

590074



COPY

Docket No: 55168(551)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: Y. Sawada, et al.

U.S.S.N.: 09/647,086 Group Art Unit: 2163

FILED: September 26, 2000 Examiner: Not Yet Assigned

FOR: DATA DISTRIBUTING SYSTEM AND DATA SELLING APPARATUS
THEREFOR, DATA RETRIEVING APPARATUS, DUPLICATED DATA DETECTING
SYSTEM, AND DATA REPRODUCING APPARATUS

HONORABLE ASSISTANT COMMISSIONER OF PATENTS
WASHINGTON, D.C. 20231

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to Assistant Commissioner for Patents, Washington, D.C. 20231 on February 6, 2001.

By: Holly F. Malarney
Holly F. Malarney

Sir:

LETTER

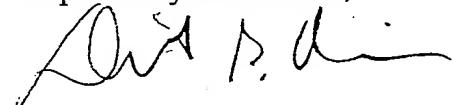
Enclosed please find a copy of the Form PTO-1449 filed with an Information Disclosure Statement with the Transmittal to the U.S. Designated Office on September 26, 2000. Further enclosed is an original, revised PTO-1449, along with a further copy of Reference AD as identified therein.

Applicants inadvertently filed the original Form PTO-1449 with the Document Number of Reference AD given as "5-85196". As noted from a review of the enclosed Reference AD, the Document Number should have been --6-85196--. Applicants respectfully request that the enclosed Form PTO-1449 be substituted for the Form PTO-1449 previously filed, and be initialed by the Examiner to confirm consideration of the references cited therein.

CCTY

Kindly charge any fees associated with this to Deposit Account No. 04-1105.

Respectfully submitted,



Date: February 6, 2001

David G. Conlin (Reg. No. 27026)
Dike, Bronstein, Roberts & Cushman
Intellectual Property Practice Group
EDWARDS & ANGELL, LLP
130 Water Street
Boston, MA 02109
Tel: (617) 523-3400
Fax: (617) 523-6440

CCPY

Sheet 1 of 2